

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220550

DATE: October 28, 1985

MATTER OF: Schubert Industries, Inc.

DIGEST:

Protest concerning rejection of "equal" bid in response to brand name or equal solicitation is dismissed. Bid did not include descriptive literature to establish that item offered met salient characteristics and the protester has not supported its contention that the failure should be waived as a minor technicality.

Schubert Industries, Inc. protests the rejection of its bid for 346 mattresses under invitation for bids (IFB) No. 263-85-B(80)-0110 issued by the National Institutes of Health. The IFB solicited bids for Surerest segmented mattresses, or equal. Schubert's bid was rejected as non-responsive because it did not contain descriptive literature to enable the contracting officer to establish that the product offered, the Schubert Chiropedic mattress model number 4012, was equal to the brand name product. Schubert maintains that its failure to submit descriptive literature was a minor technicality and that as a result of rejecting its bid, the agency will pay \$81,310 for mattresses instead of \$19,722. We dismiss the protest.

The IFB included the standard brand name or equal clause which permits bidders to offer equal products but requires that offerors include descriptive material to allow the government to determine whether their products meet the salient characteristics of the brand name product described in the IFB. Bidders were specifically cautioned that the equality of the product offered would be determined from the information furnished with their bids and that they should furnish, as a part of their bids, all descriptive material necessary for this purpose.

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To be responsive to a solicitation containing the standard brand name or equal clause, a bid offering an equal product must contain sufficient descriptive material to permit the contracting officer to assess whether the offered product possesses the listed characteristics. See, e.g., Bearse Mfg. Co., B-218220, May 7, 1985, 85-1 CPD ¶ 509. The failure to submit such descriptive information cannot be waived as a minor informality or irregularity. Vista Scientific Corp., B-210416, Apr. 5, 1983, 83-1 CPD ¶ 365, because without descriptive material the purchasing activity will ordinarily be unable to determine whether offerors intend to furnish products meeting the government's needs as reflected in the salient characteristics. Pure Air Filter Internationale, et al., 56 Comp. Gen. 608 (1977), 77-1 CPD ¶ 342.

Here, the protester submitted no descriptive material with its bid. It contends that its failure was a minor technicality, but it has not explained why this is so. Moreover, the protester has not identified in its protest what the characteristics of its model 4012 mattress are. In the circumstances, the protester has failed to state a legally sufficient basis of protest as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(e), 21.3(f) (1985).

The protest is dismissed.

Ronald Berger

Ronald Berger
Deputy Associate
General Counsel